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FM AIT TAIPEI  
TO RUEHC/SECSTATE WASHDC PRIORITY 0669  
INFO RUEHOO/CHINA POSTS COLLECTIVE  
RUCPDO/DEPT OF COMMERCE WASHDC

UNCLAS SECTION 01 OF 04 TAIPEI 000026

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SUBJECT: 2008 IPR Wrap-up: Progress Continues, Trouble Spots  
Remain

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Summary

1. (SBU) The Taiwan authorities continued combating intellectual property rights (IPR) violations over the past 12 months. The long-awaited specialized IP Court started accepting cases in July 2008, and by year's end had a caseload of over 700 cases. The Taiwan Intellectual Property Office (TIPO) finalized ISP-related amendments to the Copyright Law, but the 2008 Legislative Yuan (LY) session is likely to end before the bill can pass a third reading and become law. TIPO also took steps to address EU concerns about Taiwan's use of compulsory licenses, but did not submit an amended Patent Act to the LY before the end of the 2008 session. Physical copying of movies and music continued a decade-long fall, but digital piracy of music, movies, and software continues to be a problem. Taiwan's Ministry of Education (MOE) increased efforts to reduce electronic piracy and textbook copying on university campuses, and schools are more closely tracking and punishing violations. Rights-holders continue to complain that Taiwan Customs remains the weak link in Taiwan's improving efforts against piracy. End summary.

IP Court Opens

2. (SBU) The long-awaited specialized IP Court started accepting cases in July 2008 (ref A), and by year's end had over 700 cases. BSA and other rights-holder groups, while encouraged by the court's establishment, are pessimistic that the IP Court will noticeably improve IPR-related prosecutions since it will only have about 10 specialized IP judges and the same number of prosecutors.

3. (SBU) Jeff Harris, Chairman of the Taipei American Chamber of Commerce (AmCham) IPR Committee, told econoff on December 31 that one of his contacts in the Taipei Prosecutors Office sees the Court as an additional, burdensome layer of bureaucracy, rather than a positive development in IP-related prosecutions. According to Harris, some prosecutors would have preferred to have more and better IP experts available for courts around Taiwan, instead of one centralized IP Court.

¶4. (SBU) Harris, however, noted many of his contacts think the Court's experts are knowledgeable and have been a great help to prosecutions. Harris said the IP Court is handling cases faster than non-specialized courts, and that, unlike in many of Taiwan's district courts, there have been no major delays on any of the cases the IP Court is handling.

#### ISP Amendment Still Not Over Finish Line

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¶5. (SBU) In September 2008, the Taiwan Intellectual Property Office (TIPO) finalized a proposed amendment to the Copyright Law that would limit an ISP's liability if the provider quickly removed IPR-infringing material (ref B). In September, the EY approved the draft amendments, and forwarded the draft to the LY for approval. The LY completed a first reading and reviewed the bill further on January 5, but decided to hold a public hearing on the bill before considering it for passage, and the 2008 session will end before the amendment can pass a third reading and become law. TIPO plans to hold the hearing as soon as possible after the Chinese New Year in early February, and re-introduce the proposed amendment during the first session of 2009.

¶6. (SBU) Although the final version incorporated many U.S. suggestions, TIPO did not include U.S.-suggested language included in Article 88 of previous versions that specifically referred to secondary (or contributory) liability for ISPs that knowingly host copyright-infringing material. Local rights-holder groups continue to tell us they would have preferred to have a clear reference to secondary liability in the bill, but will push for passage of the amendment nonetheless.

TAIPEI 00000026 002 OF 004

#### EU Prompts Compulsory Licensing Changes

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¶7. (U) In January 2008, the EU completed a Trade Barriers Regulation (TBR) investigation into Taiwan's 2006 decision to issue a compulsory license to local company Gigastorage to produce CDs using Philips' licensed technology (ref C). The EU report concluded Taiwan's Patent Law is inconsistent with WTO rules on intellectual property, and recommended that the European Commission start WTO proceedings if Taiwan did not take concrete steps to amend its Patent Law within two months.

¶8. (SBU) In response, TIPO began drafting amendments to the Patent Act. Although the changes would address some of the EU's concerns, Philips is worried about several other changes the bill would bring to the compulsory license regime. Under the new version, TIPO would be able to grant a compulsory license to a local company if the Taiwan Fair Trade Commission (TFTC) finds that a patent-holder is practicing anti-competitive behavior by "abusing" its patent. However, Taiwan law--in the Patent Act or elsewhere--does not define the term "abuse," and Philips is wary of how the judicial system may define abuse in future cases.

¶9. (SBU) In addition, if a patent-holder is found by the TFTC to be practicing anti-competitive behavior, the amended Act would allow the local maker granted the compulsory license to use the license for export as well. Under the current act, if the Taiwan authorities declare a national emergency and grant a local company the right to produce a patented product, the patent-holder has the right to file a defense to challenge the authorities' right to use their patent. The new version, however, would allow the drug to be produced immediately after the patent-holder is notified by the authorities, challenge or no challenge.

¶10. (SBU) TIPO told us in November they wanted to finalize the amendments by December, and forward them to the LY for approval before the end of 2008, which would have left very little time for industry to understand and make comments on the changes. Fortunately, however, TIPO will not be able to complete the text before the 2008 LY session ends on January 13, 2009. We will continue to track the proposed amendments, and will seek to ensure TIPO gives industry adequate time to make suggestions.

## Physical Piracy Still Falling

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¶11. (SBU) According to Robin Lee, CEO of Recording Industry Taiwan (RIT, which represents the international recording industry in Taiwan as was formerly known as IFPI), the percentage of pirated CDs in Taiwan fell from 36 percent of all copies sold in 2004 to 22 percent in 2006, and remains roughly at the same rate. On January 5, Lee told econoff the number of physical outlets for pirated CDs in Taiwan is now under 20--down from 250 a decade ago--and that such "night market" piracy appears to be under control. Police records reflect this fall: in 2006, there were 227 prosecutions of music-related physical piracy cases in Taiwan, about 150 in 2007, and only 82 by the end of November 2008.

¶12. (SBU) Spencer Yang, the head of the Taiwan Federation Against Copyright Theft (TFACT, formerly known as the Motion Picture Association - Taiwan), agrees with Lee that domestic physical piracy is under control. Yang recently told econoff that TFACT estimates Taiwan's physical piracy rate for DVDs continued to decline in 2008. According to Yang, most domestic counterfeiting is now individuals burning counterfeit DVDs on home computers, but that the majority of fake DVDs now come from PRC and other Internet mail-order sites that deliver physical copies by international mail.

## Digital Piracy Shows Hopeful Signs

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¶13. (SBU) Digital piracy of music and movies--the number one worry for TFACT and IFPI--may have dropped in 2008. According to police figures, in 2007, the police made 265 raids on companies hosting websites and blogs offering unauthorized music and movie downloads, which was a 60-percent increase in raids compared to 2006 (ref C). By December 2008, however, the police had only made 114 such raids, which IFPI's Lee attributes to increased vigilance by rights-holder groups and a series of educational campaigns by TIPO.

## Software Piracy Better, but Still Bad

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TAIPEI 00000026 003 OF 004

¶14. (SBU) Digital piracy is not restricted to just music and movies: according to surveys done by the Business Software Alliance (BSA), 40 percent of member-company software used in Taiwan in 2007 was unauthorized. This is a one percentage-point drop from the 2006 figure, and places Taiwan third-best in Asia--behind only Japan and Singapore--and 23rd worldwide.

¶15. (SBU) The true picture of software piracy in Taiwan, however, is likely worse. In a recent meeting, BSA's Taiwan office head told econoff that BSA's survey methodology undercounts the level of unauthorized use, including illegal copies, expired licenses, and under-reporting of licensed users, and software company representatives privately estimate to us that 70 to 90 percent of business software in Taiwan is unauthorized.

## TANet Enforcement Continues to Improve

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¶16. (SBU) In October 2007, the Taiwan Ministry of Education (MOE) launched a Campus IP Action Plan (ref D). The Plan's main focus has been on combating IPR violations on the Taiwan Academic Network (TANet), the MOE's island-wide high-school and university intranet. Over 2008, the MOE issues increasingly strict guidance to universities, including new rules forbidding all Peer-to-peer (P2P) software use except with explicit permission, requiring daily bandwidth limits, and monitoring download volume per student.

¶17. (SBU) Each school administrator econoff has spoken with during the second six months of the IP Action Plan said his university is more aggressively monitoring illegal downloads on TANet, shutting down campus access to the most notorious P2P websites, and increasing IP-protection coordination across departments. The MOE has pushed schools to take punitive actions ranging from removing

infringing material, freezing the student's TANet account, and, in rare cases, terminating the account (ref E).

#### Textbook Piracy Down, Not Out

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¶18. (SBU) The Action Plan also targets illegal textbook copying, and university administrators tell us on-campus copying of textbooks is less rampant and less visible in Taiwan year over year, especially at on-campus copy shops. They also report off-campus copy shops are either more reluctant to copy textbooks in whole or in part, or have begun to refuse to copy more than a few pages of any one book (ref E). Many schools have also taken active measures to curb piracy, including expanding used-book sections in campus bookstores, establishing online used-book exchange platforms, or, in some cases, switching to cheaper Chinese textbooks (ref F).

¶19. (SBU) The Taiwan Book Publishers' Association (TBPA), however, complains that the problem has merely gone underground, and has collected strong, though indirect, evidence to bolster their claims of continuing copyright violations on Taiwan's campuses. TBPA believes shops still take orders through representatives on campus and standing student relationships, then deliver books directly to customers.

#### Rights Holders Want More Police Action on Campuses

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¶20. (SBU) Although rights-holder groups in Taiwan tell us enforcement of TANet violations and on-campus textbook copying has improved (ref E), rights holders continue to express frustration that police are not willing to enforce copyright laws on campuses. Rights holders attribute this reluctance to both a traditional Taiwan deference toward academic independence, and blowback from a 2001 attempt by the Tainan authorities to prosecute students at National Chengkung University for sharing MP3 files that set off a strong reaction from administrators, students, and the Taiwan public (ref G).

¶21. (SBU) AmCham officials, however, believe the police will respond to campus IP violations if the rights holder provides compelling evidence. According to Jeff Harris, Chair of the AmCham IPR Committee, member companies report the police will take action against campus violators if the affected company provides concrete evidence of wrongdoing. Harris blames rights-holder groups for failing to gather sufficient evidence in many cases, and for not trying hard enough to identify and work with the "friendlier" police precincts in each city.

#### Customs: Still the Weak Link in Enforcement

TAIPEI 00000026 004 OF 004

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¶22. (SBU) Although pharmaceutical companies note a steady decrease in the prevalence of counterfeit drugs in Taiwan (ref A), they continue to complain that Taiwan Customs is a weak link in Taiwan's relatively good efforts against pharmaceutical piracy. Other rights holders echo this, and complain small batches of pharmaceuticals, music, and movies are commonly smuggled into Taiwan by mail-order, usually from China, but also from South East Asia.

¶23. (SBU) Pharmaceutical, movie, and music industry representatives tell econoff Customs officials do not seem willing to spend time seizing smaller quantities of counterfeits, which they attribute to the officers wanting to avoid the large amount of paper work required for even relatively small seizures, as well as a lack of manpower available for follow-up investigations.

¶24. (SBU) AmCham's Harris, who is the local trademark enforcer for a number of international luxury brands, agrees with the rights holders' assessment of Customs problems, and recently told econoff "every single one" of his clients identifies Customs as a weak link in Taiwan's IPR enforcement.

Comment

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¶25. (SBU) Customs enforcement is spotty; digital music, movie, and software piracy remain high; and the LY failed to pass Internet service provider (ISP) amendments to the Copyright Act in 2008. Taiwan authorities, however, opened the IP Court as promised on July 1, and also made clear improvements in campus IPR enforcement, both key problems listed in the 2008 Special 301 IPR Watch List citation. In addition, preliminary statistics show digital piracy--or, at least, the number of domestic websites offering unauthorized downloads of music and movies--may be decreasing. We will continue to press Taiwan over the coming year to pass the ISP amendments, and will work with universities and the MOE to get digital piracy and textbook copying under control. End comment.

YOUNG